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MONTANA DEPARTMENT OF STATE LANDS

HARD ROCK BUREAU

RESPONSES

to the

OFFICE OF THE LEGISLATIVE AUDITOR

December 6, 1994

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LEGISLATIVE AUDIT REPORT for HARD ROCK BUREAU

DSL RESPONSES

I, II. AUDIT REPORT CHAPTERS I and II - INTRODUCTION AND BACKGROUND

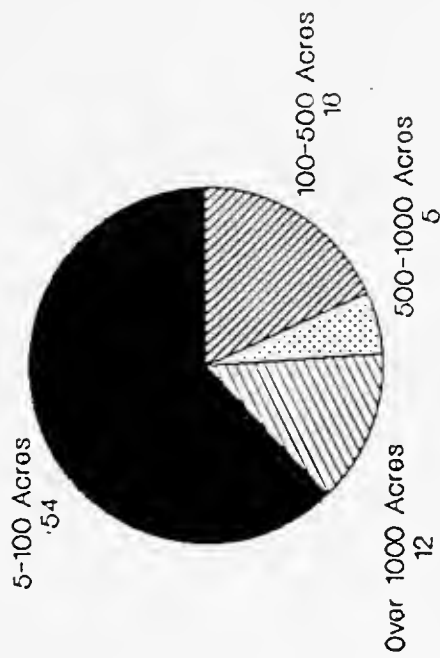
The Department's responses to the Legislative Audit Report are organized by chapter, to mirror the organization of the audit report. Page numbers are also provided for additional cross-referencing. Attachments which have been previously submitted have not been reproduced. These documents are on file at the Office of the Legislative Auditor and the Department of State Lands.

Additional background information, to that provided in the audit report, is provided below in Table 1 and Figures 1 and 2. These tables and figures characterize Department workload in greater detail.

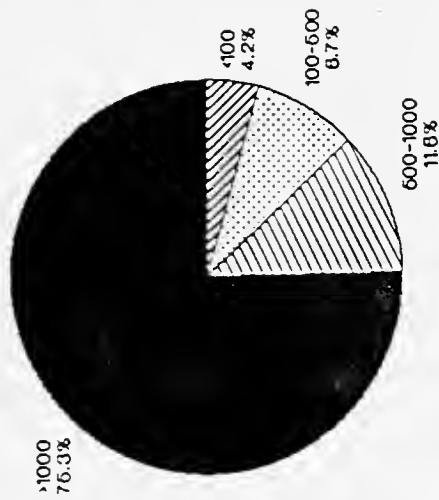
Table 1. - HRB PROJECT OVERSIGHT - 1994			
HRB Section	FTE	Approximate Number of Projects Administered*	Approximate Size
SMES	2.5	750	<5 Acres
Exploration	2	372	.1 to 100 Acres
Operating Permits	7	84	5 - 4,000 Acres
MEPA	3	5	5 - 4,000 Acres

* These FTE are supported by 1.43 administrative staff, .5 attorney staff, and 1 Bureau Chief. All non-administrative FTE are professional staff graded 14-18.

Figure 1 shows that 12 out of 87 mines contain 76% of the permitted acreage while 54 out of 84 mines administered comprise less than 5% of the acreage. Once a mine is permitted, the workload (Figure 2) does not go away. There is a continuing workload in permit maintenance: inspections, annual report reviews, monitoring reports, amendments, and revisions.



Number of Permits
in
Each Size Class



Number of Acres Permitted
in
Each Size Class

Figure 1.--Distribution of Mine Permits by Size Class

As can be seen, 12 out of 87 mines contain 76% of the permitted acreage. Conversely, 54 out of 87 mines contain 5% of the total acreage.

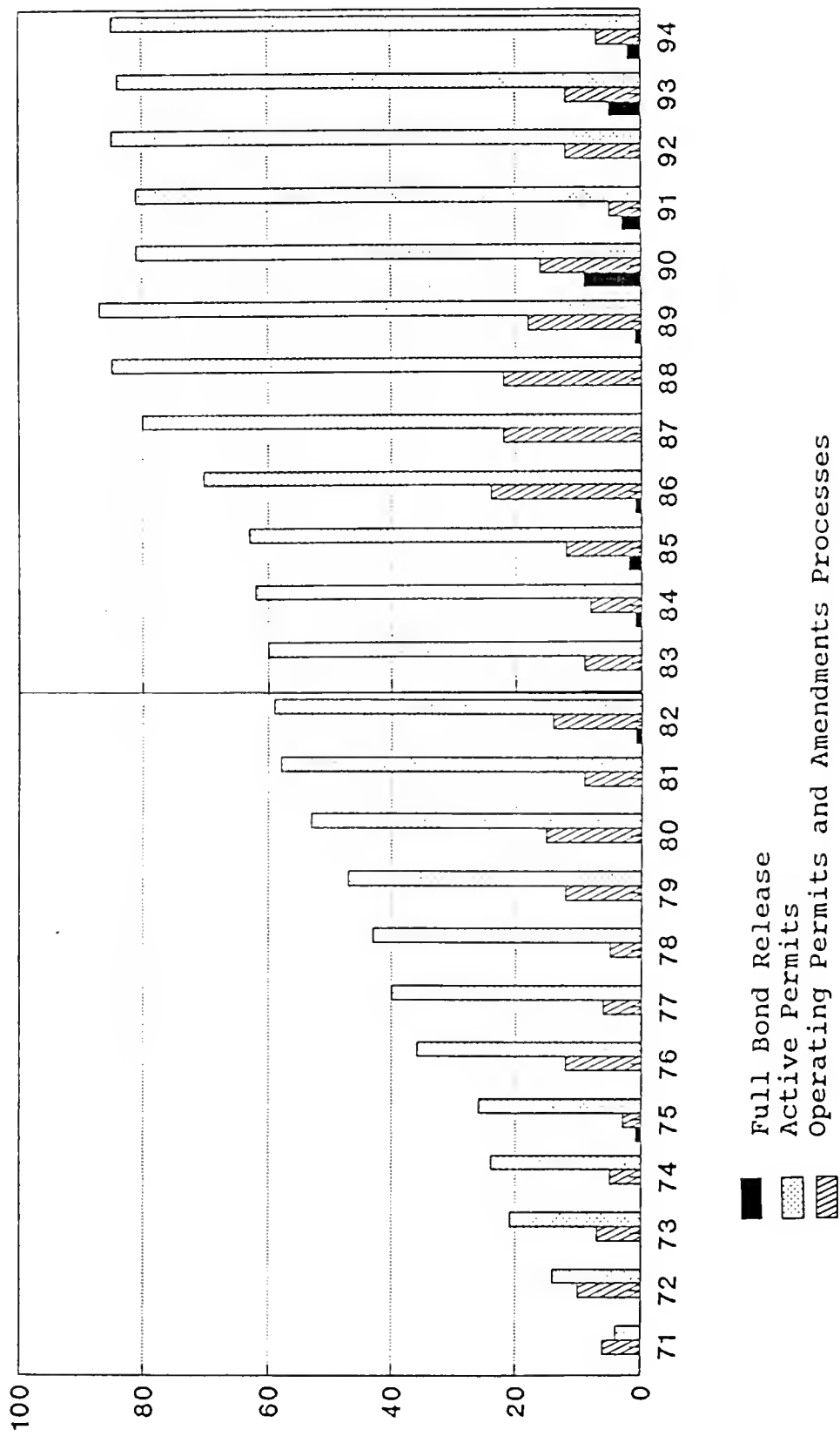


Figure 2.--Operating Permit Activity 1971-1994

III. CHAPTER III BUREAU ADMINISTRATION

MANAGEMENT OVERSIGHT OF STAFF'S DAILY AND PROCEDURAL ACTIVITIES (p.21-22)

Since 1989, HRB has developed procedures for numerous activities including EA Preparation, Bonding, Inspection and Enforcement, and Permitting. The level of detail varies. As need dictates and resources allow, additional detail will continue to be added.

MANAGEMENT OVERSIGHT OF STAFF'S DAILY AND PROCEDURAL ACTIVITIES - Permitting (p.22)

The HRB management reviews all Montana Environmental Policy Act (MEPA) compliance documents, reviews recommended permit decisions for compliance with MEPA and the Metal Mine Reclamation Act (MMRA), and reviews most deficiency letters. The level of review however, is commensurate with the workload at the time. Guidance and oversight are also an ongoing part of the bureau's weekly staff meetings. Additional review as suggested by the audit report is conducted as workload and resources allow.

MANAGEMENT OVERSIGHT OF STAFF'S DAILY AND PROCEDURAL ACTIVITIES - Monitoring (p.22)

HRB management of inspections includes quarterly tracking at a minimum, since 1991, supplemented by oversight at staff meetings and additional management monitoring as the need arises. In addition, HRB has two tracking systems to monitor various types of self-reporting. As time and resources allow, these systems will continue to be expanded. Additional monthly tracking of both inspections and needed follow-up have been implemented. See additional detail in Chapter IV.

HRB has recognized that the frequency of mine inspections was below that required by the statute. Figure 3 reflects the emphasis HRB is placing on meeting the inspection frequencies established by statute. This emphasis has been possible because of the recent (1993-1994) decline in permitting activity, as shown in Table 2.

Inspections of operating mines are documented. In addition, the Department occasionally conducts site visits to discuss issues, orient new management staff, etc. These site visits are not considered inspections. In response to audit concerns, HRB added a formal requirement to document all site visits. This is in excess of the level of documentation required by the statute.

HRB inspection methodology includes cross training of all inspectors using US Office of Surface Mining's materials, supplemented by in-house expertise. Training specifically addresses compliance with procedures contained in the HRB Inspection and Enforcement procedures document.

Inspection Summary

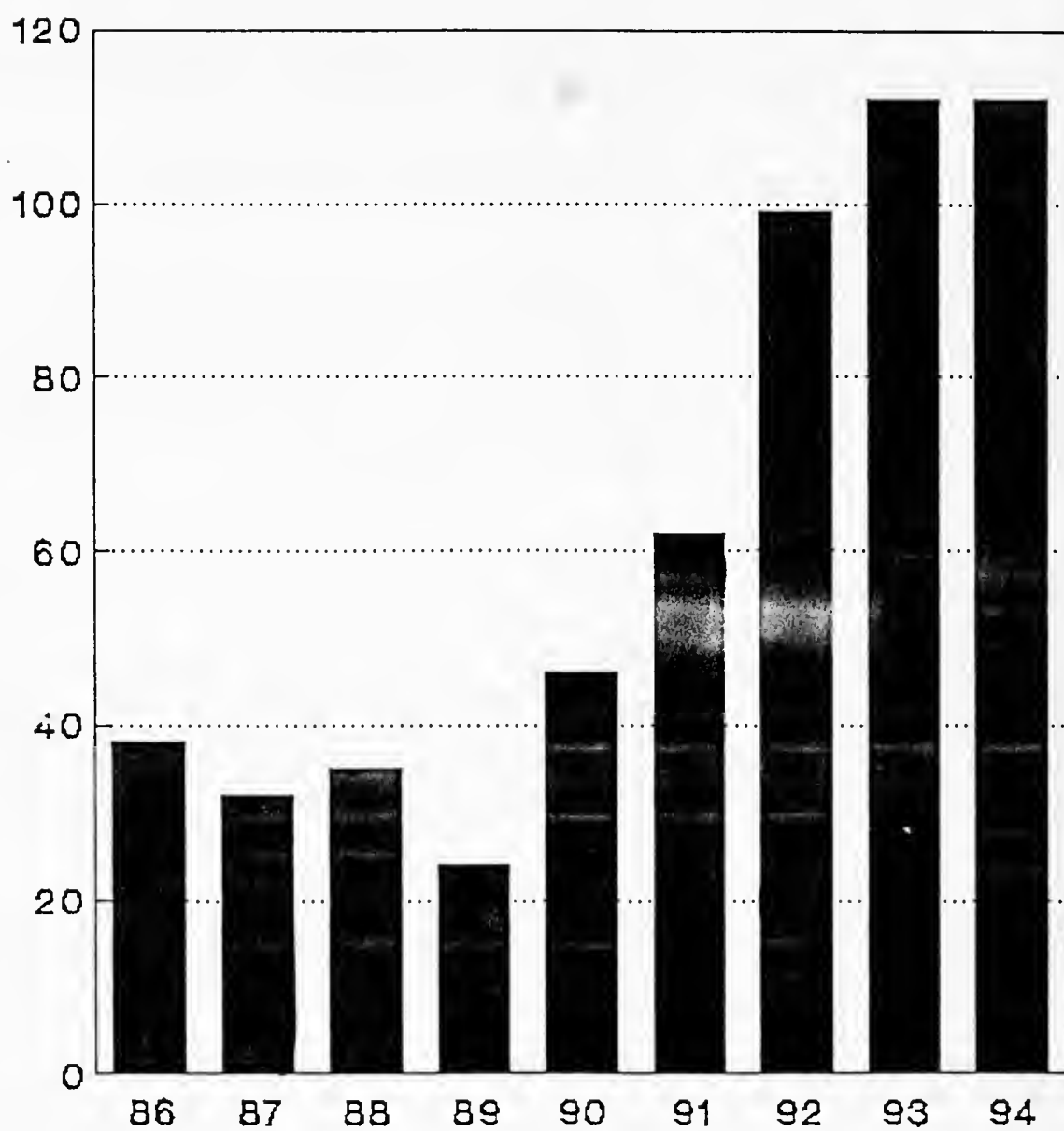


Figure 3.--Number of Mine Inspections Completed

**Table 2.--IRB BASIC WORKLOAD
1989-1994**

YEAR	FTE	SET OF RULES RULES WRITTEN		APPLICATION REVIEWS COMPLETED		INSPECTIONS CONDUCTED		MEPA COMPLETED			PUBLIC MEETINGS	PERMITTING ENFORCEMENT INITIATED	ANNUAL REPORT REVIEW
		GOAL	ACCOMP	GOAL	ACCOMP	GOAL	ACCOMP	EAS	EIS	RODS			
1989	6.32	4	0	82	82	82	24	14	0	0	8	5	82
1990	5.45	4	3	68	68	78	46	12	2	1	11	2	98
1991	4.42	2	1	46	46	100	62	4	4	0	12	8	77
1992	7.92	0	0	71	71	120	99	20	4	3	7	11	82
1993	9.13	6	0	78	78	120	112	28	3	2	9	16	85
1994	8.73	6	4	63*	63	112	148	9*	0	0	5*	8*	84

Project Size: Varies from 5 acres to over 4,000 acres.
Project Distance from Helena: Varies from 10 minutes to over 6 hours.
EA Size: Varies from 2 pages to over 300 pages.
ELS Size: Varies from 69 pages to over 800 pages.
Deficiency Letters: Vary from 1 page to over 115 pages.
Annual/Monitoring Reports: Vary from 1 page to several hundred pages.

* Through October only

Additional FTE would minimize shortcomings identified in the inspection program. Inspection and Enforcement supervision for 84 mines, at the level of detail suggested by this audit would take approximately .45 to 1.8 FTE supervisors (extrapolated from Coal and Uranium Bureau data). Based on the 5-year average of unconduted inspections, HRB would need a minimum .13 FTE inspectors per year or up to .25 FTE in a worst case year to complete required inspections. Based on minimum performance recommendations in Chapter V, HRB would need a minimum additional 7.5 FTE to assure all resource specialist visit each site annually. HRB is currently funded to complete approximately one inspection per year at each site, when permitting workload averages 65 application reviews per year (see Table 2). Additional detail is provided in Chapter V.

OVERSIGHT OF DAILY AND PROCEDURAL ACTIVITIES - Compliance Enforcement (p.22)

HRB has had difficulty in the issuance of timely Notice of Noncompliances (NONs) and penalty assessments because of workload levels and lack of available personnel. In order to assure more timely issuance, an additional 0.69 FTE, minimally, and supervisory FTE noted above, are necessary. This assumes the average delay, divided by 2080 hours, reflects in some measure the FTE necessary to reduce delay. An additional discussion of Compliance Enforcement is presented in response to Chapter VI.

Penalty calculations are prepared 30 days or more after issuance of an NON. These calculations are presently filed in the enforcement file.² Prior to refinement of the bureau's filing system, the actual calculations may have inadvertently been mailed directly to the permittee. Some penalties may have been established, without penalty calculations, prior to initiation of the current assessment system. Some of the older calculations may be missing.

Bureau procedures now include a step documenting abatement follow-up. This will assure that additional emphasis is placed on documentation that abatement has been completed. See Attachment A. Additional file documentation and related visits would likely takè 1 to 16 hours per incident, depending on the situation and the site involved. This is approximately 0.6 FTE per year assuming the average number of enforcement actions remains stable. Given HRB resource limitations, HRB focus will continue to be placing the highest priority on on-the-ground compliance, as compared to completing all the supporting paperwork.

As noted above, an additional .45 to 1.8 FTE would be needed for inspection supervision alone. Additional supervisory responsibilities identified as desirable throughout the audit report indicate approximately 6000 hours, or 3 FTE would be needed to provide the additional level of management oversight suggested.

² Lack of penalty calculations was not previously identified as an issue. A specific response cannot be provided until specific "missing calculations" have been identified.

BUREAU MANAGEMENT INFORMATION NEEDS TO BE EXPANDED (p.23-25)

HRB compiles and analyzes task specific information regarding bureau activities on an as-needed basis. The data compiled for the purposes of this report are based on information already on hand. An additional .5 to 1 FTE would be needed for additional maintenance of tracking systems and associated quality control.

Most HRB staff work assignments must be reactive, because most regulatory work (Figure 4 and Table 2) cannot be assigned prior to its receipt. As statutory responsibilities, workload and resources allow, proactive assignments are made for other work, such as development of data summaries and procedures to supplement and streamline overall bureau functioning.

The bureau believes that permitting, inspection, monitoring and enforcement have equal priority (Table 3). Permitting activities have much tighter statutory timeframes (Table 4). Failure to provide timely permit review results in automatic permit approval (82-4-337(1)(d)(iv), MCA). "Default permitting" is far more likely to result in environmental compliance problems than is a delayed inspection or monitoring report review. The Department conducts both activities to the extent practicable.

Available HRB data show the impact of permitting activities on other activities. Table 2 and Figure 4 both reflect how permitting activities relate to other program functions. The data shows that as permitting and other activities decrease, inspection activities increase.

The HRB evaluated inspection data quarterly and yearly. This has been increased to monthly, and is periodically more frequent if a specific need arises. In addition, inspections are regularly discussed at staff meetings. At the year end, the bureau makes a **final** determination/accounting to verify previous tracking activities. To resolve concerns about untimely tracking, a final determination is now made one month earlier. See Chapter V.

Program complexity and scrutiny have created a need for additional and increasingly specialized FTE. Attachment B provides rationale for the bureau's request for additional personnel. Expanded state and federal involvement, shown in Figure 5 has increased the complexity of permitting. The most complex project now underway involves the MT Department of Health and Environmental Sciences (DHES), the USFS, the BLM, the Army Corps of Engineers, Yellowstone National Park, other states, the Environmental Protection Agency, the Bureau of Reclamation and the US Fish and Wildlife Service. Projects on federal lands routinely involve everyone listed except Yellowstone National Park and the Bureau of Reclamation. Typically, multiple levels of agency involvement also occur. For example, USFS contacts would include the Ranger District, the National Forest, the Regional Office and Washington, DC.

The complexity of permitting, as a result of increased agency involvement, is reflected primarily in the Montana Environmental Policy Act (MEPA) workload and management workload. MEPA coordinators, and management work to facilitate interagency efforts to assure timely and effective MEPA compliance for a given project. A secondary effect is reflected in permitting staff workload as each staff member must become articulate enough in other agencies' statutes to effectively coordinate activities. For example, hydrologists must understand water quality law, engineers must understand the dam safety statutes, biologists must understand the endangered species act, etc.

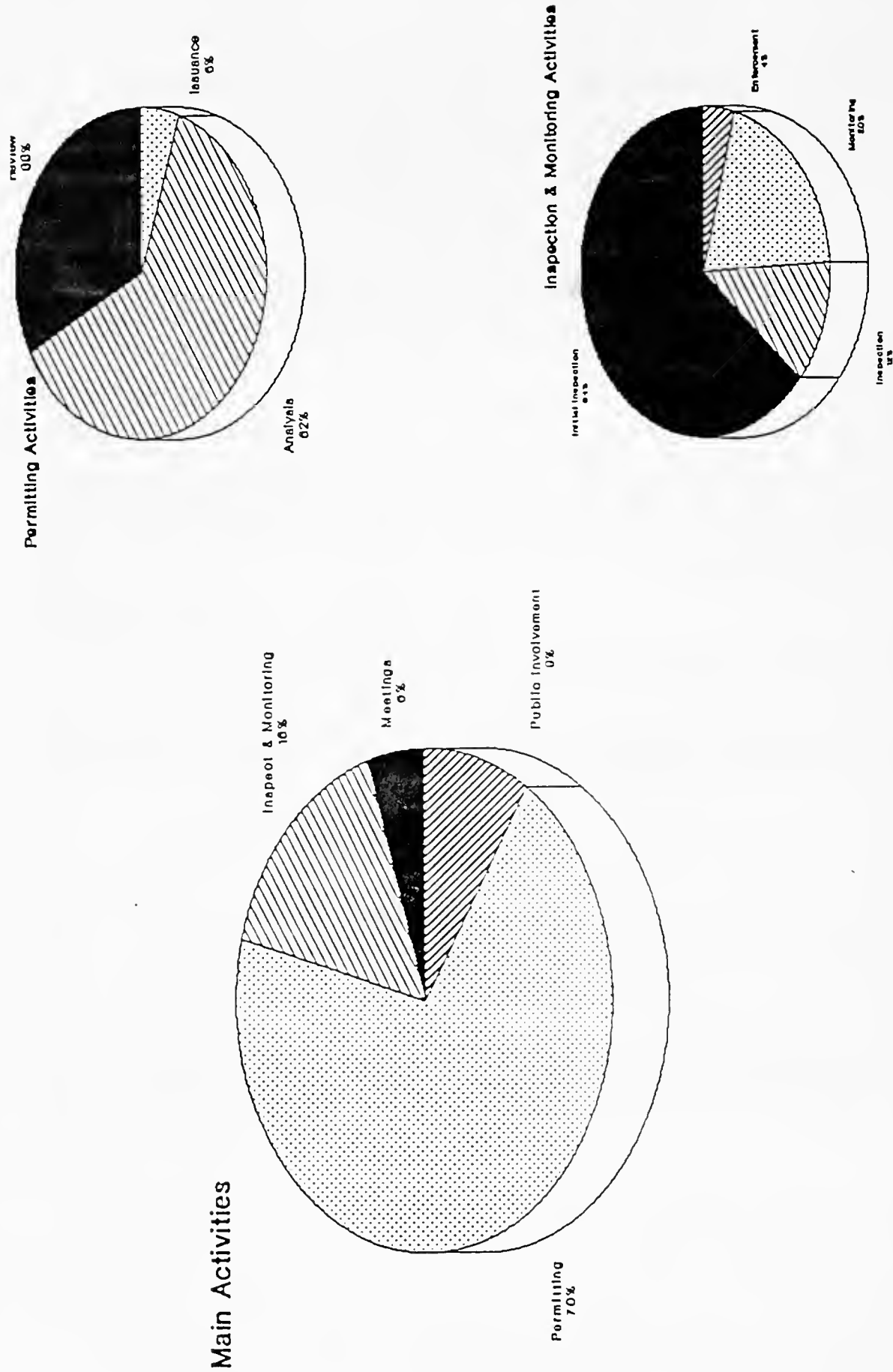


Figure 4.--IIRB Task Analysis
Based on a 1 year sample of 3 representative projects

Table 3. - Prioritized Programmatic Administrative Responsibilities

ACTIVITY	PRIORITY
MEPA Compliance	1
MMRA Compliance	1
Budget	1
Compilation of Data	5
Interagency Coordination per MEPA	2
Legislation and Rulemaking	3
Personnel	1
Planning	3
Policy and Procedure Development	4
QA/QC on Priority 1's	2
Records Management	1
Staff Training	3
Supplemental Documentation	5
Supplemental Public Information	4
Workload Completion	1
Workload Tracking (see critical elements issue)	2

Table 4. - DSL STATUTORY TIMEFRAMES

CITATION	DSL ACTION	MMRA TIMEFRAME
337(1)(a)	Review Initial Applications	60 days
337(1)(a)	Review Resubmittals of Applications	30 days
337(1)(b)	Determine Adequacy of Application	30 to 60 days - EA 30 to 395 days - EIS
338(2)	Review Bond	every 5 years
341	Inspect	365 days
341	Review Bond Release Applications	30 days
342	Review Minor Amendments	30 days
342	Review Minor Revisions	30 days

The statute provides that the Department may collect fees for contractor and employee expenses when those expenses are beyond the normal operating expenses of the Department. HRB's normal operating expenses are defined by the legislature in its establishment of the bureau's biennial budget. This budget does not include costs in the following categories: MEPA travel and per diem, MEPA copying and distributions costs, MEPA coordinator FTE, and consulting costs and related costs for additional expertise for evaluation of such projects. Therefore, HRB can and has justified these costs. Expense data is routinely compiled in SBAS reports for both normal operating expenses and for expenses charged to projects where such fees have been previously assessed.

The bureau chief, supervisors, and records managers compile data to facilitate bureau management on an as-needed basis. Systems used are shown in Attachment C. As workload and resources allow, additional data will be compiled. As the number of computerized systems both for tracking data and for management of technical data increase, the need for technical support increases.

HRB management believes it is not practical to develop more detailed workload analyses for task specific activities. Attached throughout this response are examples of the types of workload analyses, based on the systems noted above and data on file, currently available within the bureau. These analyses, the results of this audit, and the bureau's Executive Planning Process requests clearly indicate what work is not being accomplished (i.e. additional tracking, additional documentation, etc.). Task analysis as suggested in the audit would likely take .19 FTE, assuming 1 hour of staff time every two weeks and an equal amount of management review.

RECOMMENDATION #1 (p.25)

We recommend that the HRB compile and analyze more specific workload data on bureau activities to manage bureau functions and identify personnel needs.

RESPONSE: Completed. Additional data is provided in the above responses and throughout this report. The Department has concluded, based on the information provided in this audit report and the Department's response, that its current priorities and implementation of tasks are adequate given the resources available. Our analysis indicates that substantially more FTE would be needed to fully implement the recommendations in this audit report.

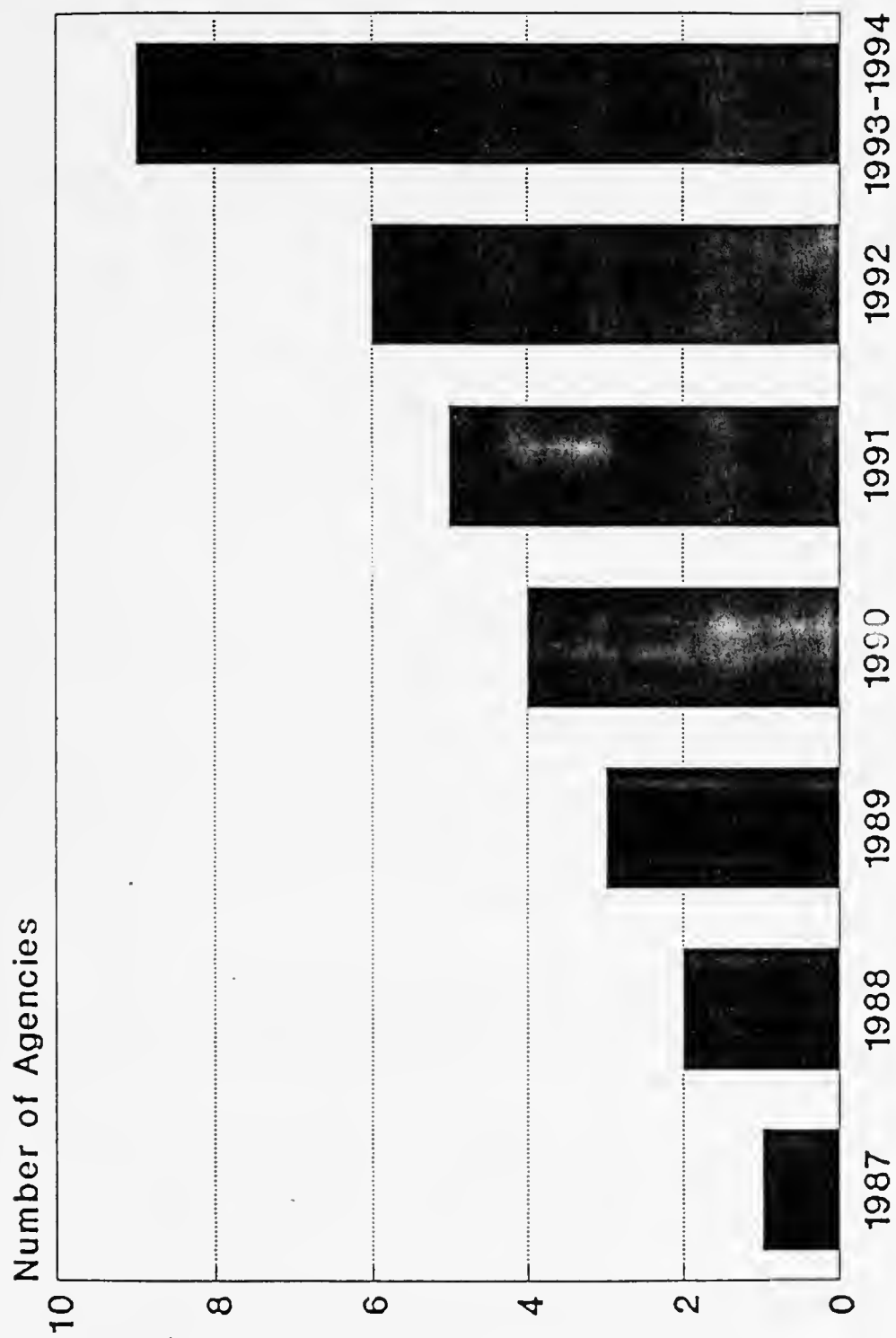


Figure 5.--Number of Agencies Taking an Active Role in Mine Permitting

COMMUNICATION/COORDINATION WITH WATER QUALITY DIVISION NEEDS REVIEW (p.26-28)

The DSL and the DHES have a Memorandum of Understanding (MOU) in place to facilitate water quality-mining communications. Table 5 reflects the opportunities provided to the Water Quality Division (WQD) in an effort to increase coordination.

HRB inspection reports were not required to be sent to the WQD until July 1992. They are now routinely sent to WQD. However, it is reported that no reliable filing system exists at WQD (LAC 1994, page 3, line 1) and thus transmittal of reports cannot be verified. To assure no problems in distribution occur at DSL, one person has been specifically assigned the task of sending reports to WQD.

Table 5. - Interagency Coordination Opportunities Provided to Water Quality Division	
<ul style="list-style-type: none">• Participation in HRB staff meetings• Scheduling information• Review of mine applications• Review of draft MEPA text• Exchange of inspection reports• Availability of HRB files• Conversion to a STORET database• Participation in project meetings• Participation in all-bureau• Training opportunities, such as<ul style="list-style-type: none">- SHIPLEY (MEPA/NEPA training)- Inspection Training- Mine Waste Management Training• 50% Funding• Participation in inspections• Formal notification of project meetings and work assignments	

The interagency MOU does not reference a liaison position. Such a position may not be necessary to the functioning of the MOU. The DSL has entered into many MOUs with other agencies, none of which provide for liaison positions. Implementation of other MOUs is typically through assigned project coordinators funded within each participating agency.

The DSL has contracted in the past for a liaison position; however, the contract has only identified general responsibilities. Detailed timeframes for regulatory decision making are established in the statutes rather than in the contract. Under the current regulatory framework, HRB has no management responsibility for WQD. Thus the potential to develop additional "corrective measures" is limited. If the contract is renewed, issues such as those identified in Attachment D will be addressed.

RECOMMENDATION #2 (p.28)

We recommend that the DSL re-evaluate the communication and coordination process with the DHES in regard to implementing and enforcing the MMRA, WQA, and MEPA.

RESPONSE: In process. The Department recognizes that communication and coordination are less than optimal. However, both agencies had deferred further efforts in this area until such time as the agencies' audits were complete. Now that both audits are complete the Department has initiated an effort to further develop interagency coordination efforts (see Attachment D). The agencies are in the process of reviewing the contract and MOU to identify issues and develop timelines for resolution.

OVERALL SUMMARY (p.28-29)

Faced with multiple priorities, bureau management has focused on meeting statutory timeframes and requirements rather than overall bureau administration. Bureau management has also focused on quality control and accountability within the limits of the bureau's resources.

HRB relies on the professional staff who are professionals using the standards of their discipline to assure statutory requirements are complied with. The bureau relies on MEPA to assure a consistent decision-making process is instituted.

HRB has numerous management controls, as discussed above, which are supplemented--through the development of additional procedures, review, and training-- as workload, resources, and identification of issues allow. The bureau also relies on the professionalism of its staff to assure the standards of their specific professions are upheld. No amount of management control in the form of comprehensive guidance can substitute for professional evaluation and analysis. However, the bureau will continue to supplement professional evaluation and analysis with process guidance.

The bureau is required to make defensible decisions. Based on HRB's track record the bureau has succeeded 98.3% of the time. Productivity is shown in Table 2 and in various figures throughout this document. Additional measures of outcomes and productivity will be developed, as the need arises, and when guidance and tracking systems are complete.

CONCLUSION (p.29)

HRB continues to be committed to implementing management controls within the constraints established by the Legislature. HRB will continue to modify its processes to provide for increased efficiency, effectiveness, and documentation within these constraints.

IV. CHAPTER IV - PERMITTING

HRB'S ADEQUACY REVIEW PERIOD HAS EXTENDED BEYOND THE STATUTORY TIMEFRAME FOR SOME PROJECTS - Completeness Reviews (p.34)

The Department meets mandated completeness review time-frames.

HRB'S ADEQUACY REVIEW PERIOD HAS EXTENDED BEYOND THE STATUTORY TIMEFRAME FOR SOME PROJECTS - Adequacy Reviews (p.34-36)

The adequacy review period on large projects frequently extends beyond the statutory time limit. Although, the HRB does not have the authority to extend the adequacy review period beyond the timeframes in the statute, the applicant does have authority to extend timeframes. Applicants, therefore, have periodically done so.

If an applicant fails to extend the timeframes, the HRB must deny or approve a permit and bring closure to the entire process. This however, is not easily accomplished; the Department must assure that (1) MEPA compliance is complete, and (2) either decision is defensible, regardless of its relationship to the 365-day limit.

The extension of timeframes is usually needed on large-scale projects because of the involvement of other agencies (Figure 5). These agencies have their own permits and permit decision-making processes which may not be conducted jointly or parallel with the HRB process and may not have the same time constraints. (Other agencies have no statutory timeframes.) However, the Montana Environmental Policy Act (MEPA) requires the evaluation of connected actions and therefore, whether other agencies conduct joint processes or not, is irrelevant to the required scope of a MEPA-document. Other agencies are, however, bound by the same or similar decision-making processes as outlined in MEPA and NEPA even though they have no timeframes.

RECOMMENDATION #3 (p.36)

We recommend that the HRB

- A. Comply with the additional 365 day timeframe for all adequacy reviews, or*
- B. Seek legislation for statutory authority to exceed timeframes in instances where adequacy cannot be determined in the additional 365 days.*

RESPONSE: Completed. The applicant already has the authority to extend timeframes. However the Department has proposed legislation for the 1995 Legislature to provide for additional clarifications.

THERE IS A NEED FOR INCREASED MANAGEMENT OVERSIGHT OF THE PERMITTING PROCESS - HRB Needs to Improve Procedures for Assuring Statutory Compliance with Permitting Related Statutes (p.36-38)

When an application to mine is received, the bureau publishes a legal notice and requires that the invoice from the newspaper include proof of publication. All original proofs are filed with the Department's Central Management Division. Although the statute does not require duplicate filing systems, the bureau started a duplicate file a few years ago to facilitate retrieval.³

The bureau then evaluates the plan of operations by comparing statutory requirements to information submitted in the application. Staff have thorough working knowledge of the statute for their discipline and a working knowledge of other disciplines. However, all staff are aware of, or need to be aware of, all requirements. The MMRA is regularly reviewed by staff in the course of their work. When a specific issue or obscure requirement is raised, the staff and management refer to the statute. Like all statutes, the MMRA contains a few unique quirks and even legal staff, after nearly 20 years experience, regularly look up specific statutory language to respond to questions. As the bureau develops additional experience, policies, procedures, and training, staff awareness of statutory requirements will be increased. Long-term retention of qualified staff is the key to consistent interpretation of the statute and rules.

HRB personnel are provided job-specific training when they are hired. Ongoing training, such as inspector training, statutory interpretations, etc, is incorporated into staff meetings and is formally developed (based on need) as workload and resources allow. Compliance with applicable statutes will be evaluated for every permit with the statutory checklist now in use by the bureau (Attachment E)

As issues are identified during application review, they are recorded in deficiency letters. HRB focus has been directed toward documentation of problems and their resolutions, not towards the documentation of nonproblems. However, the recently adopted statutory checklist (Attachment E) should assure that no requirements are overlooked in the course of a permit evaluation.

When a review is complete and the permit is deemed acceptable, a decision to approve a project has been made, an applicant must submit a performance bond prior to issuance of a permit.⁴

Following issuance of a permit, permittees are required to file annual reports and respond to stipulations. In searching the files for this audit, it was noted that some documentation demonstrating compliance is lost or missing. With the approval of a records manager for the bureau for FY92, the bureau has been able to devote more resources to tracking and thus increase the certainty that all documents are filed and available. See Chapter VI.

³ The bureau is not aware of any notices that are not available. If a specific notice is in question, the bureau should be contacted.

⁴ In one case, the Department amended an operating permit when, through a variety of circumstances, the necessary bond was already in place to cover the disturbances approved under the amendment. This situation is not routine; the HRB was short engineering staff. With the Legislature's approval of the second engineering position in 1991, no further on-time issues have arisen.

RECOMMENDATION #4 (p.38)

We recommend HRB management expand management oversight to assure compliance with mine permitting statutes.

RESPONSE: Completed. The Department has 14 tracking systems in place and is striving to assure that the level of detail and accuracy within these systems meets bureau management needs (See Attachment C). As noted above the bureau has recently added a system (Attachment E) to document that all permitting statutes have been complied with.

THERE IS A NEED FOR INCREASED MANAGEMENT OVERSIGHT OF THE PERMITTING PROCESS - Formal Requirements Should Be Established for the Documentation and Support of HRB's Permitting Decisions (p.38-41)

HRB does not document the rationale for its determination of the type and amount of information needed for each application completeness beyond what is required by the statute. This level of documentation is not required by MMRA. The statute sets minimum limits. The information used to determine completeness is contained in the application, is used in the MEPA analysis and is documented at appropriate levels in MEPA documents. Public and industry scrutiny act to verify the DSL conclusions that the necessary information is available.

The bureau must inform the applicant when an application has been determined to be complete. HRB omitted making a completeness determination for one mine in 5 years. This is a success rate of 98.3 percent (58 out of 59) for the 5-year period.

HRB deficiency letters routinely contain all HRB deficiency concerns. These letters are prepared by staff. Discrepancies between rough draft working products and final letters occur for one of four reasons: staff overlooked information in the application, information was supplied in response to previous questions, information is outside the scope of the MMRA, or similar technical questions asked by multiple staff have been merged into one concise question. Documentation of these types of changes exceeds that required by the statute.

HRB routinely coordinates with other state and federal agencies as a part of its MMRA and MEPA reviews. HRB also makes many other contacts. Interagency contacts are documented. However, when an agency does not respond, the Department assumes it has no comments. HRB will strive to continue documenting interagency contacts as appropriate to the type of contact.

Once completeness under MMRA is determined, MEPA provides a very clearly delineated decision-making process for the agency to follow. Environmental Assessments (EAs) and Environmental Impact Statements (EISs) are the tools used to document that process. Documentation for the type of environmental review (EA or EIS) which will fully address application adequacy is contained in the MEPA documents themselves. HRB documents the determinations of impact for checklist EAs using criteria established by the Environmental Quality Council (see Attachment F). The determinations are made using criteria in the statutes and the standards of the profession. All EAs document the decision as to whether an EIS is

needed. If no EA is prepared, because it is obvious to all parties that an EIS is necessary, the EIS itself identifies the significant impacts which determined an EIS was needed.

During permitting reviews, HRB thoroughly reviews all technical areas and strives to review all nontechnical information submitted. However, HRB has not documented its review and consideration of proposed mining and reclamation plans, except through deficiency letters. HRB has historically only documented areas where problems exist, due to workload and staffing limitations (see figures and tables above). However, Attachment E, is now in use and will document that compliance in all areas has been evaluated.

The MEPA regulations, EAs, and EISs document the rationale for environmental alternatives considered as a part of environmental review. In addition, all but administrative conditions/stipulations are documented in the EAs and EISs. Ministerial actions are exempt, by regulation, from the need for decision-making analysis.

HRB includes documented staff recommendations as permit stipulations. Occasionally these recommendations change through time as more data becomes available.⁵

The documentation that mitigations reduce impacts below the level of significance is generally contained in the EAs. It should also be noted that very few EAs are mitigated EAs. Only one example of failure to document mitigations appropriately has been raised. Again the bureau will strive to eliminate this shortcoming entirely.

HRB responses to technical concerns raised in comments on draft EISs are presented in responses to comments in environmental documents.⁶ In order to assure appropriate responses have been provided, EIS responses to comments are routinely reviewed by third-party contractors, staff, management, and multiple interagency reviewers prior to publication.

The criteria used for decision making are defined in the MMRA and are supplemented by the standards of each profession (engineering, hydrology, etc). The level of documentation for Department decisions to issue or deny permits is consistent with that required by MEPA.

Plans of operations and permits are enforcement documents. MEPA documents are not "enforcement documents." This is based on the structure of both MMRA and MEPA. The purpose of MEPA is to assure that agencies provide appropriate levels of public disclosure and informed decision making. MEPA analyses document decision-making processes. Enforcement is conducted using the standards outlined in MMRA and the permit that is issued using both MMRA and MEPA. The purpose of MMRA is to provide for the regulation of hard rock mining.

HRB does not have formal systems in place to evaluate completeness and adequacy review outcomes. Comments from the public, industry, and other government agencies on MMRA and MEPA analyses provide these evaluations. The ultimate measure is defensibility

⁵ Explanations for the two potentially overlooked stipulations cited in the audit report were provided in September to the auditors. Eighty other stipulations of far greater significance were incorporated into the permits under review.

⁶ No examples of failure to adequately respond have been identified.

from legal challenge. However, the statutory checklist, (Attachment E, above) has been developed to further document these outcomes.

If documentation is inadequate, HRB is always available to explain processes, technical decisions, etc as the need arises. Bureau records are routinely used by the public, industry, consultants, attorneys and other government agencies (see Figure 6). HRB is unaware of any instance in 25 years in which permitting has been delayed by lack of detailed staff documentation. Legal actions in the past 25 years have focussed primarily on questions of law. HRB decisions have been appropriately documented 98.3 percent of the time in the last 5 years.

THERE IS A NEED FOR INCREASED MANAGEMENT OVERSIGHT OF THE PERMITTING PROCESS - HRB Management has Formulated Changes in the Permitting Process. Additional Oversight is Necessary to Ensure Comprehensive Decision-Making (p.41-42)

Each checklist is reviewed for completeness by several layers of management prior to Department decision-making. HRB will periodically review checklist accuracy to ensure comprehensive decision-making if problems develop.

HRB makes decisions consistent with the procedures set out in MEPA to assure decision-making is informed. Similarly, MEPA sets standards of documentation required. These required levels of documentation are implemented by HRB.

RECOMMENDATION #5 (p.42)

We recommend HRB management initiate a more comprehensive and consistent process of making, supporting, and documenting decisions.

RESPONSE: Completed. HRB uses MEPA as the standard for establishing a comprehensive consistent process for making, supporting and documenting permitting decisions. The following procedures, checklists and other guidance have been developed and will continue to evolve as result of this audit, to more comprehensively document comprehensive and consistent decision making.

- . Use of a statutory checklist to document completeness more thoroughly
- . Formal notification of mining projects to Weed Districts
- . Revised system for tracking responses to deficiency letters
- . Development of:
 - . stipulation tracking systems
 - . permit summary reports for field activities
- . Formal procedures for writing stipulations
- . Formal criteria for risk analysis
- . Additional contact with WQD

OVERALL SUMMARY ON THE TIMELINESS OF HRB PERMITTING PROCESS (p.42-43)

The HRB permitting process procedures are defined in MMRA and MEPA. Supplemental procedures are documented, in writing, based on need and professional judgement, as workload and resources allow. Management oversight is again provided through the MEPA process, which allows not only management oversight, but public and industry oversight as well.

CONCLUSION (p.43)

Development of expanded management controls over the permitting process would help insure compliance and improve bureau's permitting decisions and will be implemented as described above.

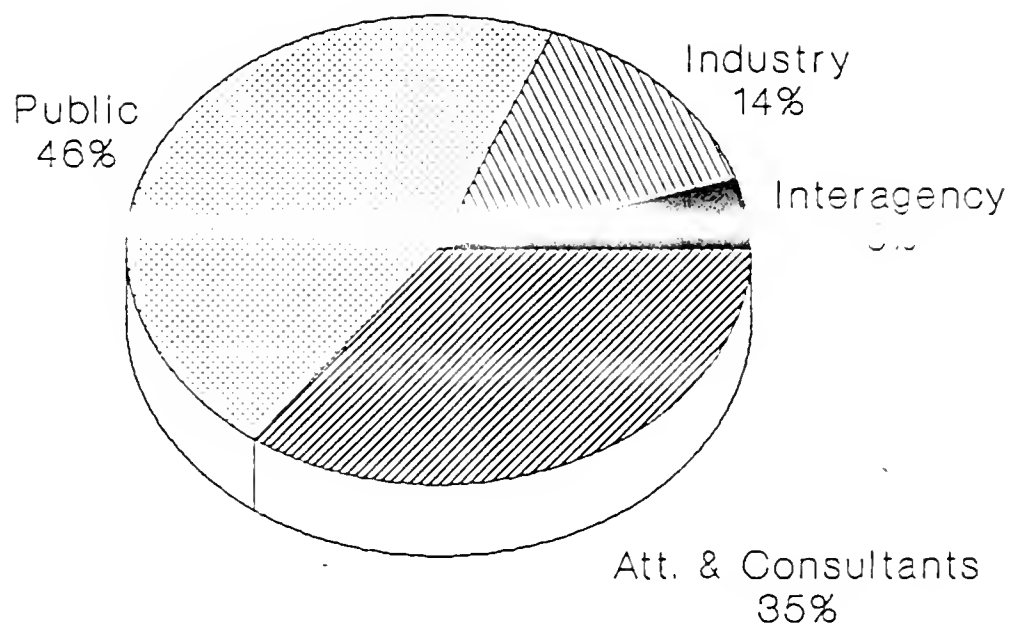


Figure 6.--External Use of Department Files

V. CHAPTER V - MONITORING

LACK OF PERMIT STIPULATION DETAIL CREATES DIFFICULTIES IN MONITORING (p.45-47)

Permit stipulation detail varies with the significance of the stipulation. The level of detail in permit stipulations may have contributed to confusion in 2 out of 80 instances in the last 5 years. This indicates that 97.5 percent of the stipulations have been adequately prepared. Stipulations are prepared as described in Attachment G.

RECOMMENDATION #6 (p.48)

We recommend the HRB:

- A. Ensure clarity, consistency and enforceability of all operating permit stipulations.*
- B. Develop and implement a formal process for reviewing permit stipulation language prior to issuance.*

RESPONSE: Completed.

- A. The Department's goal is to assure stipulations are clear consistent and enforceable.
- B. Attachment G defines the formal process to be used for evaluating permit stipulation detail.

HRB INSPECTION PROCEDURES - There is little or No Documentation of Inspection Preparation (p.47-49)

HRB staff have knowledge of permit-related details prior to inspection visits. Staff generally review past inspection reports prior to conducting an inspection. There is no statutory requirement that preparation for inspections be documented. However, the more thorough permit-related knowledge, the more effective an inspection can be conducted. Therefore the Department has procedures for preparation for inspections, as documented in Attachment H, which require staff review to refresh such knowledge. These procedures are implemented to the extent practicable. It takes at least 1 to 4 hours each, or a minimum .12 FTE to thoroughly prepare for all inspections (3 hours ave * 84 sites / 2080 hours).

In order to facilitate inspection preparation, a field file has been prepared which ultimately will contain copies of prior inspection reports which may be removed from the office for the course of an inspection. This file will also contain a summary of the related plan of operations. This system was initiated in 1993 to streamline inspection preparation. An additional 1400 hours or more are necessary to complete the system as statutory priorities allow. This system will increase staff efficiency. Approximately 70 hours may be available this winter for such purposes. This time does not reflect maintenance needs once the system is in place.

The inspection report form is a checklist used as the basis for determining what is reviewed when preparing for and conducting an inspection (Attachment I).⁷

HRB INSPECTION PROCEDURES - On-site inspection Frequency and Timing Need Improvement to Assure Compliance with Plans and to Protect the Environment (p.49-50)

Inspection workload is shown in Figures 2, 3, and 4 and on Table 2. Irreversible consequences could result from failure to conduct inspections, therefore the bureau conducts as many inspections as practicable when balancing multiple priorities and risk. During the review period, 93.9 percent (108 out of 115) of the required inspections in the review sample were completed. However Table 6 shows the overall shortfall for the audit period. This shortfall, assuming 8 hours of effort per missing inspection over the 5-year period, averages .13 FTE per year to minimize the 5-year average backlog of uncompleted inspections.

Table 6. - Backlog of Uncompleted Inspections					
Year	Needed	Inspections Completed	Incomplete	Surplus*	Total Conducted
1989	82	17	65	7	24
1990	98	38	60	8	46
1991	77	47	30	15	62
1992	82	75	7	24	99
1993	85	77	8	35	112
TOTAL:		SHORTFALL 170		COMPLETED	323

* These inspections were conducted at previously inspected operations, in spite of the overall shortfall, because the bureau's risk criteria were met.

The bureau has used risk analysis for 25 years to determine inspection priorities, although the process had not been "formalized." Table 7 reflects that risk analysis, much of which has recently been formalized in MMRA Rules.

⁷ The example cited in the audit report was a situation where no noncompliance existed. All effects were mitigated consistent with appropriate contingency plans and permit requirements. However, due to the correlation of the problem with power failures, the inspector determined that, pursuant to 82-4-337,MCA, contingency plans should be modified. Modifications are described in file 00113.20, dated November 30, 1994.

**Table 7. - Risk Criteria Used by HRB to Establish
Operating Permit Inspection Priorities**

TYPE OF RISK	CRITERIA
High Risk	<ul style="list-style-type: none"> • Greater than 1,000 Acres • Cyanide in Use • Sulfide Orebody • Year Round Operation • Rapid Rate of Change
Medium Risk	<ul style="list-style-type: none"> • 100 to 1,000 Acres • No Cyanide Use • No Sulfide Ores • Year Round Operation • Moderate Rate of Change
Low Risk	<ul style="list-style-type: none"> • Less than 100 Acres • No Tailing Impoundments • Seasonal Operation • No Cyanide • No Sulfide • High and Dry • Minimal Change Through Time

E. HRB INSPECTION PROCEDURES - HRB Lacks Consistent Management Oversight to Assure Comprehensive Inspections are Completed (p. 50-51)

It is HRB's intent to conduct regularly scheduled comprehensive inspections which assure review of all aspects of the operating/reclamation plans and permit stipulations. All bureau inspections are required to be complete inspections, as documented in Attachment J. Inspectors are provided with cross-training to ensure all necessary areas of expertise are applied to an inspection. In order to assure all applicable specialists visit a site, an additional 7.5 FTE would be required. (This assumes 25 percent of the bureau's 6 FTE resources are now allocated to inspections, most of which are annual. Therefore, 5 specialists⁸ visiting each site would require 5 times the number of resources. This estimate does not address the issue of timeliness.)

HRB management oversight focuses on (1) assuring the statutory requirement for inspections is met and (2) providing the training and procedures to assure comprehensive inspections are conducted. HRB has limited resources to conduct additional inspection oversight management. It is estimated that .45 to 1.8 FTE would be necessary to conduct the ongoing inspection training, oversight and management activities outlined in this report. This estimate is based on data from other bureaus with similar inspection responsibilities who are achieving these goals.

⁸ An engineer, biologist, surface water hydrologist, a ground water hydrologist, and a geologist would be needed for resource visits.

HRB INSPECTION PROCEDURES - Timing of Onsite Inspections Does Not Always Correspond with Mining Operations (p. 51-52)

HRB observations of such activities as the installation of liners, drains, clay caps, etc would help avoid potential future environmental problems and increase mining companies' diligence. Therefore, HRB conducts as many of these inspections as possible. In order to minimize the potential for future problems and to maximize companies' diligence, the bureau also requires certified engineering reports detailing how facilities are constructed. Many of these activities are ongoing and for HRB to observe all such activities at all mines is not practical.

HRB inspection reports document when questionable activities have occurred. If such activities were observed in a more timely fashion, impacts may have been prevented or further minimized. However, for every day an inspector is not onsite, questionable activities could occur which may have been prevented or minimized by the inspectors presence. The bureau is funded to conduct approximately one inspection per mine per year. A more proactive approach requires more funding for additional inspections and management oversight, as noted above.

RECOMMENDATION #7 (p.53)

We recommend the HRB:

- A. Establish policy regarding inspection preparation to ensure effective use of staff time.*
- B. Develop and utilize a formal risk analysis process to prioritize inspections.*
- C. Implement a process to ensure inspections correspond with mining operations and utilize appropriate staff expertise.*

RESPONSE: Completed.

A. The Department's policy regarding inspection preparation has been documented and is attached. See Attachment H.

B. A risk analysis process exists and is described in Table 7, and the MMRA rules.

C. Staff are assigned to inspections based on their knowledge of the operation and ongoing activities. Inspection needs have been prioritized as described in Table 7 and those priorities are balanced with ongoing statutory responsibilities and the resources available. An additional 60 or more FTE, which is not practical, would be necessary to fully implement this recommendation as described in the associated audit text.⁹ See additional responses above.

⁹ This assumes a resource specialist for each discipline is on site inspecting every other week.

HRB INSPECTION PROCEDURES - Documentation of Inspections is Inconsistent and Often Untimely (p.53-54)

HRB staff file inspection reports as deadlines for other workload, return of lab data, etc., allow. These reports may take several days to prepare. Faster filing of inspection reports requires more inspection and/or permitting resources, as suggested above. HRB has a tracking system which documents all completed inspections. This system was initially used yearly, but has been used quarterly for several years, is now being used monthly and is periodically being used weekly. Use of this system enables the bureau to place more emphasis on completion of inspections.

HRB INSPECTION PROCEDURES - Communication of Inspections Visits and Results Needs Improvement (p.54-55)

The bureau communicates inspection visits and results in two ways: through inspection reports and through exit conferences. Since 1986, bureau procedures have ensured that companies receive copies of all inspections conducted. HRB, however, does not mail these reports by certified mail, and is not responsible for permittee filing systems, our contention that these reports have been mailed cannot be documented.

HRB conducts exit conferences with available personnel at the minesite. How the results of these conferences are communicated by mine staff to mine management is unclear. Exit conferences are not conducted when mine personnel are not onsite at the time of an inspection, as frequently happens at smaller operations. The inspection report has been modified to document exit conferences.

Staff are trained to conduct, document, communicate, and follow-up on inspections. Completion of inspections is actively managed on a monthly basis. Further staff oversight is conducted in response to specific complaints. Additional oversight would require .45 to 1.8 FTE as described above.

RECOMMENDATION #8 (p.57)

We recommend the HRB increase management oversight of how inspections are conducted, documented, communicated, and followed up on.

RESPONSE: Ongoing HRB has provided increased staff guidance on the conduct, documentation, communication and follow-up of inspection activities. Additional oversight will be implemented to the extent practicable. The completed inspection tracking system has been improved and utilized on a much more regular basis.

HRB INSPECTION PROCEDURES - Inspection Reports Often Lack Documentation of Required Follow-up Activity (p.56-57)

HRB requires file documentation that inspection follow-up has been completed, as described in Attachment K and other attachments. Tracking systems have been developed to facilitate management oversight of these processes and to assure documentation of follow-up is provided. Inspection report modifications have also been made to facilitate this process.¹⁰

RECOMMENDATION #9 (p.57)

We recommend the HRB:

- A. Develop specific guidelines for personnel to follow regarding documentation of inspection follow-up activity.*
- B. Implement a formal management oversight process to monitor and ensure necessary follow-up occurs.*

RESPONSE: Completed. Attachment K provides specific guidelines for personnel to follow regarding documentation of inspection follow-up activity. Attachment K also provides a mechanism for additional management oversight.

NOT ALL OPERATOR-GENERATED MONITORING REPORTS ARE REVIEWED BY THE HRB IN A COMPREHENSIVE OR TIMELY MANNER (p. 57-59)

A tracking system has been developed for water monitoring and other reports to assure that receipt of reports is timely. Annual report tracking has also been modified to assure timely receipt of reports. Summary information has been required for several of the recent large permits issued and has been requested of older operations with massive volumes of data, in order to streamline data review. In addition, the requirement for summary information has been formalized through Department rulemaking activities. These more efficient procedures, however, do not assure reports are reviewed when resources are not available.

HRB reviews all data and information in a manner which provides for as comprehensive and timely review as resources allow. High priority information is reviewed within 30 to 60 days of receipt if the resources are available at the time in question. HRB risk priorities described in Table 7 apply, regardless of whether inspections, or report or data reviews are at issue. The two major incidents of untimely evaluation relate directly to workload and recruiting problems. Hydrologist positions were vacant at one point for 21 months because of recruiting problems (Figure 7).

¹⁰ In the example cited in the audit report, a revision request was submitted for additional leach pad loading. Ongoing monitoring as well as the analysis of the revision request determined that additional loading would not result in the situation described on page 56 of the audit report.

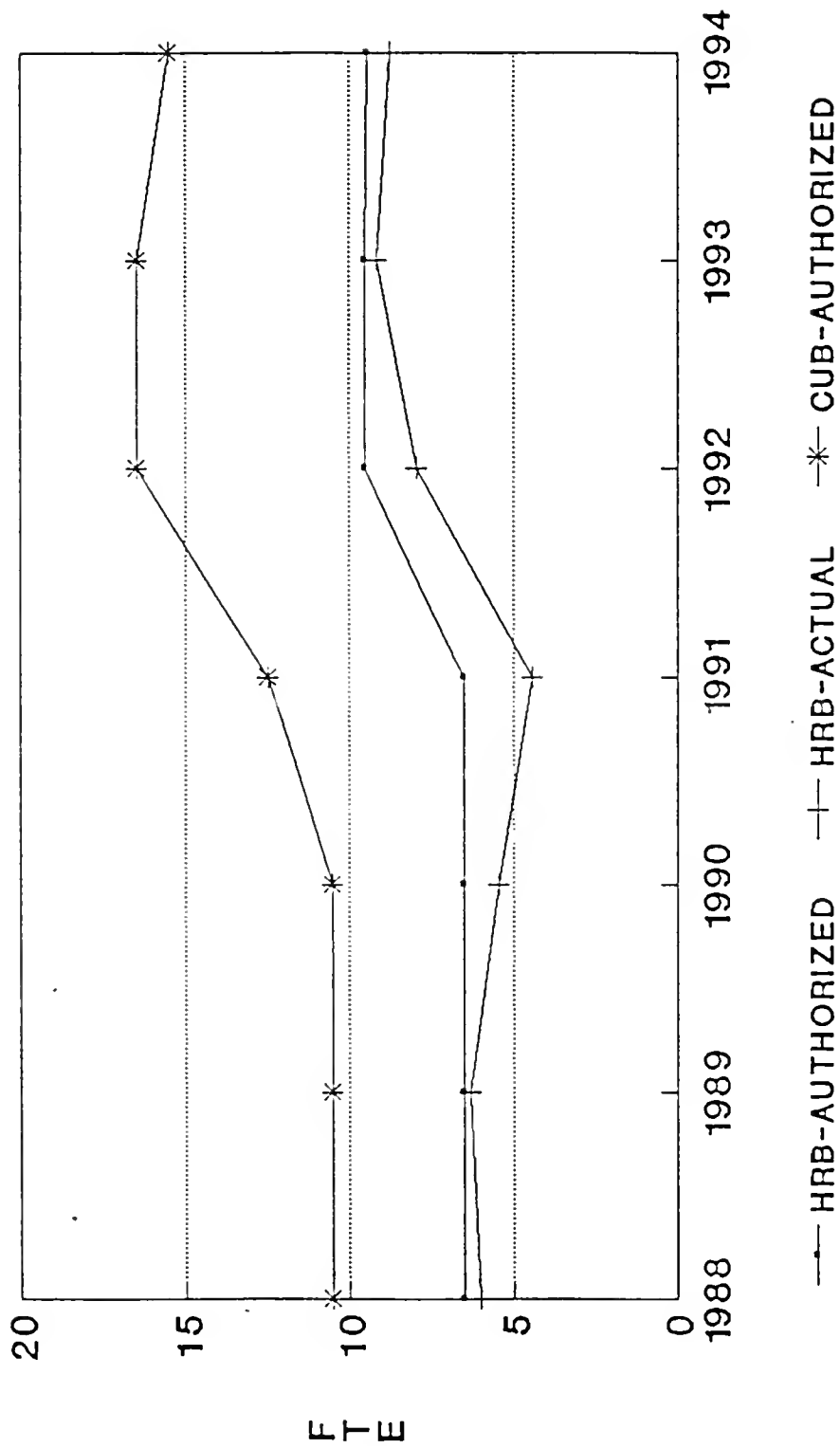


Figure 7.--Resource Comparisons

HRB regulates an average of 84 permitted sites, CUB regulates an average of 21 permitted sites.

HRB management will continue to evaluate procedures used to receive and review operator data to assure a comprehensive and timely review, as well as to assure operators are complying with all permit requirements.

RECOMMENDATION #10 (p.59)

We recommend the HRB:

A. Establish procedures to assure submission of operator-generated data required by the HRB.

B. Ensure a complete analysis of data received from mining operations is conducted by HRB personnel according to established priorities.

RESPONSE: Completed. Attachment L reflects the procedures adopted by the bureau to assure submission of operator generated data. Attachment M, describes the analytical process to be used. This process will be implemented to the extent practicable.

THE HRB NEEDS TO INCREASE THE EFFECTIVENESS OF ITS ANNUAL MINE REPORT MONITORING PROCESS (p.59)

Tracking systems are now in use to assure annual reports are submitted in a timely fashion. In addition, filing procedures have been changed to reduce the probability of lost and/or missing information. See Attachment M.

THE HRB NEEDS TO INCREASE THE EFFECTIVENESS OF ITS ANNUAL MINE REPORT MONITORING PROCESS - Concerns with Annual Report Submissions (p.60)

Annual reports are required to be submitted on the anniversary date of a permit. During the review period, two permittees did not submit all required annual reports. This means that 98.2 percent of the annual reports (113 out of 115) in question were properly submitted. However, tracking systems have been changed to assure greater accuracy and to assure all fees are submitted.

During the review period, four permittees failed to submit all required annual report information. Analyses of documented missing data shows that at least 91 percent (628 out of 690) of all required data elements in all reports sampled was available. However, review procedures have been changed to assure greater accuracy. (Attachment L and M).

THE HRB NEEDS TO INCREASE THE EFFECTIVENESS OF ITS ANNUAL MINE REPORT MONITORING PROCESS - Lack of Comprehensive Monitoring System (p.60-61)

The HRB tracking system is now used monthly to assure reports are not late. The tracking system was modified, as described in Attachment J and Attachment N. Permittees are notified 30 days in advance that reports are due and are tracked every 30 days thereafter until compliance or closure is assured.

All reports, regardless of type, are now reviewed within 30 days of receipt. The quality and detail of the review will continue to be affected by risk factors, as well as by workload and resources.

The Department depends on mine plans, mine inspections, and bond tracking systems to ensure proper bonding levels. Bond information in the annual report is supplemental. With the addition of a second engineer in 1991 to the HRB staff, arguable one-time example used in the audit report, is unlikely to recur.

Since July 1, 1991, ownership information has been required by statute in annual reports. As a result of the oversights noted in this audit, forms have been revised (Attachment O).

THE HRB NEEDS TO INCREASE THE EFFECTIVENESS OF ITS ANNUAL MINE REPORT MONITORING PROCESS - Current Information Requirements May Not Meet Needs (p.61)

The bureau has spent 4 years identifying needed modifications to the annual reporting process. The spring of 1994 was spent working with industry and environmental groups (through meetings and informal comment) to achieve consensus on the reforms needed. Proposed rules were submitted to the Board of Land Commissioners in June 1994 and final rules were adopted by the Board in October 1994.

THE HRB NEEDS TO INCREASE THE EFFECTIVENESS OF ITS ANNUAL MINE REPORT MONITORING PROCESS - Annual Report Monitoring Summary (p.61)

The information submitted in annual reports is used to properly enforce MMRA statutes and permits.

RECOMMENDATION #11 (p.62)

We recommend the HRB:

- A. Develop a more effective process for tracking and follow-up of annual report submissions.*
- B. Ensure all required information is in each annual report.*
- C. Evaluate information submitted to ensure it meets the bureau's needs for monitoring mine activities, and make changes as necessary.*

RESPONSE: Completed. Attachments L and M describe the process the bureau has implemented for tracking and follow-up of annual report submissions. A new annual report form, Attachment O has been adopted to assure all required information is submitted, and annual reports will continue to be evaluated to the extent practicable. New rules addressing annual reporting were part of the rule package adopted by the Land Board in October 1994.

OVERALL SUMMARY ON THE EFFECTIVENESS OF HRB MONITORING PROCEDURES AND ACTIVITIES (p.62)

The bureau has procedures to assure clarity and enforceability of permit stipulations. Procedures requiring pre-inspection research and analysis, adequate inspection documentation, communication of inspection findings, and follow-up are also in place. Annual reports are monitored as previously described. The frequency and timing of inspections, the comprehensiveness and or time/sequencing of inspections, and evaluation of operator-generated reports will continue to reflect workload and resource levels. All of these issues have been addressed above.

CONCLUSION (p.63)

HRB strives to comply with all its statutory responsibilities to the extent practicable. See Table 2.

More formal monitoring processes have been developed to assure a more consistent and comprehensive regulatory function, as described above. HRB oversight management has continually increased since 1989 and will continue as priorities and need dictates.

VI. CHAPTER VI - ENFORCEMENT OF OPERATING PERMIT REQUIREMENTS

PROCEDURES USED FOR ENFORCEMENT (p.65)

The procedures used for HRB penalty calculations have been a formal policy since 1990 and were codified in 1994. These procedures consider the history of violations, the seriousness of a violation, the degree of operator negligence and the amount of good faith demonstrated by the operator in achieving compliance. Specific procedures addressing waiver of violations are also included.

TIMELINESS OF HRB'S ENFORCEMENT PROCESS SHOULD BE IMPROVED (p.65-66)

The time it takes from observation of a potential noncompliance to its resolution varies with the significance of the impacts of the noncompliance balanced with other workload activities and deadlines, as well as the availability of staff. Assuming a relationship between the average delay and FTE resources, an additional .69 FTE (1435/2080) would be needed to assure reduced turnaround in the bureau by the average delay time. Timely enforcement is a bureau goal.

TIMELINESS OF HRB'S ENFORCEMENT PROCESS SHOULD BE IMPROVED - Lack of Management Emphasis Due to Other Bureau-Established Priorities. (p.66-67)

Bureau priorities are established by MMRA and by the resources the Legislature allocates to those priorities. These priorities have been previously identified in Tables 2, 3, and 4. Many questions during enforcement proceedings also require legal support. Given that HRB legal staff resources have been reduced in recent budget reductions, the legal staff provides as much timely support as it can, in the context of Department-wide priorities.

RECOMMENDATION #12 (p.67)

We recommend HRB management improve the compliance enforcement process by:

A. Revising policies and procedures to help ensure timely issuance of NONs and penalty assessments.

B. Improving actions used by HRB personnel for issuing NONs and penalty assessments.

C. Examining the role of legal staff in evaluating appeals of NONs and assessing penalties.

RESPONSE: In process. The bureau has suggested statutory language to improve the timely issuance of NONs and penalties. See Attachment P. As a part of ongoing efforts to improve the process, the role of legal staff will continue to be evaluated and modified.

ABATEMENT FOLLOW-UP ACTIONS ARE NOT ALWAYS TIMELY OR DOCUMENTED (AS TO POLICY) (P.68)

All enforcement actions identify required abatement activities and set timeframes for compliance. Due to other statutorily established deadlines, bureau personnel cannot always provide timely follow-up on abatement orders. The success rate for follow-up within or near the abatement deadline is 85.7 percent (36 out of 42).

Difficulties also exist in formally documenting follow-up activities. Due to workload and resource limitations HRB's first enforcement priority is compliance on-the-ground. However, a new tracking system for abatement follow-up has been developed as a result of this concern (see Attachment A) and will resolve documentation concerns raised in this audit.

RECOMMENDATION #13 (p.69)

We recommend HRB management increase emphasis on abatement inspections by:

- A. Enforcing established policy of conducting follow-up within abatement timeframes; and*
- B. Documenting results of follow-up in the compliance files.*

RESPONSE: Completed. Follow-up of abatement action, and supporting documentation will continue to be conducted as workload and resources allow. A new enforcement procedure, reflected in Attachment A, will improve the tracking of documentation.

THE HRB LACKS AN ACCURATE COMPREHENSIVE AND EASILY ACCESSIBLE SYSTEM FOR TRACKING COMPLIANCE ENFORCEMENT ACTIONS (p.69-70)

The HRB has three sources which collectively contain all of the data necessary to fully determine the bureau's enforcement activities. These three sources are supported by a tracking system which does not yet contain historical data. Since the system does not yet include historical data, the consideration of past violations is not based on the tracking system. Rather, this information is obtained from the hard copy files. As system improvements continue to be identified and implemented, the files will be reduced to two complete sources and a tracking system. Efficiencies will be improved when the system is complete. The system is used to trigger responsive Department actions.

RECOMMENDATION #14 (p.71)

We recommend the Department increase emphasis on HRB compliance enforcement by establishing a comprehensive, timely, accurate enforcement tracking system.

RESPONSE: In Process. One of the Department's goals is to have a comprehensive, accurate, and timely tracking system. As workload and resources allow, the existing system will continue to be expanded to meet this goal.

OVERALL COMPLIANCE ENFORCEMENT PHILOSOPHY SHOULD BE REVISED TO PROVIDE A FORCEFUL CONSISTENT APPROACH (p.71-72)

A total of 98.2 percent (113 out of 115) of the annual reports required were submitted in a timely fashion. Annual reports required under 82-4-339, MCA, do not effect the bureau's ability to regulate environmental affect. It is the bureau's intention to have consistent and effective enforcement program.

The bureau has resolved annual report issues identified as a result of this audit and has implemented tracking systems which are intended to result in better documentation of follow-up and decision making. The recently adopted enforcement rules will provide additional support to meet the bureau's goals. Annual reporting requirements have also been modified to improve the utility of the reports (Attachment N).

HRB issues noncompliances (NONs) as follow-up findings and other priorities dictate. Penalties are calculated using a recently adopted process (1990).¹¹ This process has since been codified. History of NONs is a factor in the consideration of penalty assessments. However, its role is minor compared to other factors such as the seriousness of a noncompliance, the degree of negligence involved in a noncompliance and the number of days a noncompliance was ongoing. As HRB is able to strengthen its enforcement program, issues such as the potential under assessment of penalties as a result of unresolved or unidentified violations will be evaluated.

Additional guidelines will continue to be developed as need and experience dictate.

RECOMMENDATION #15 (p.73)

We recommend the HRB management provide more specific guidelines to staff regarding issuance of NONs and determination of penalties.

RESPONSE: Completed. This guidance has been provided in the form of rules, recently adopted by the Board of Land Commissioners (Attachment N). Additional guidance will be developed as issues evolve.

OVERALL SUMMARY ON HOW EFFECTIVE HRB'S COMPLIANCE ENFORCEMENT PROCESS IS IN ASSURING COMPLIANCE WITH STATUTES (p.73)

See above discussion.

CONCLUSION (p.73)

The HRB enforcement program will continue to be modified as need and experience dictate. As situations are defined which do not merit the issuance of NONs, those situations and the supporting rationale will be documented in bureau procedures. Provisions for penalty waivers are addressed in the newly developed rules, and the additional procedures and tracking described above should improve the maintenance of detailed documentation. As experience with these rules is gained, additional guidance will be developed.

¹¹ A penalty was reduced from \$62,400 to \$6,240 a few years ago and was inadequately documented. At the time, the bureau had just adopted the current penalty system and no guidance for documentation of penalty reductions had evolved. This particular penalty, after being reduced, was nearly an order of magnitude higher than any penalty ever previously assessed by the bureau, and thus was considered precedent setting.

Chapter I and II BACKGROUND

Table 1.--Project Oversight - ie Numbers of Projects

Figure 1.--Distribution of Permits by Size

Figure 2.--Operating Permit Activity

Chapter III - ADMINISTRATION

Table 2.--HRB BASIC WORKLOAD

Table 3.--Prioritized Programmatic Administrative Responsibilities

Table 4.--Statutory Timeframes

Table 5.--Interagency Coordination Opportunities

Figure 3.--Inspection Summary

Figure 4.--HRB Task Analysis

Figure 5.--Change in Involvement of Other agencies

Attachment A.--Abatement Form

Attachment B.--EPP Data for Personnel Needs*

Attachment C.--Summary of Bureau Tracking Systems*

Attachment D.--Letter to DHES regarding Liaison

Attachment E.--Statutory Checklist*

Chapter IV - PERMITTING

Figure 6.--Use of Department Files

Attachment F.--EQC Standards

Attachment G.--Development of Permit Stipulations

CHAPTER V - Monitoring of Mines

Table 6.--Average Inspection Needs

Table 7.--Risk Analysis

Attachment H.--Inspection Preparation Procedures*

Attachment I.--Inspection Report*

Attachment J.--Inspection Procedures*

Attachment K.--Inspection Follow-up*

Attachment L.--Annual Reports*

Attachment M.--Annual Report Review Procedures*

Attachment N.--Rulemaking*

Attachment O.--Revised Annual Report Form

Attachment P.--Legislative Changes

* These attachments have been previously submitted to the Auditor and are not included here because of bulk. Copies are available at the DSL or the Auditor's Office.

ATTACHMENT A

(Letterhead)

CERTIFIED MAIL NO. _____
Return Receipt Requested

^

TERMINATION of ABATEMENT ORDER

Company Name: ^ _____

Mine: ^ _____

Permit No: ^ _____

Date: ^ _____

Notice of Noncompliance: ^ _____

Abatement Deadline: ^ _____

Description of Noncompliance:

^

Noncompliance Abated as follows:

^

The abatement order contained in Notice of Noncompliance No. ^ is hereby terminated.

Inspector Hard Rock Bureau: _____
Reclamation Division

cc: Jackie Merritt
Legal Staff
Company Representative

FC:_____.22

DEPARTMENT OF STATE LANDS



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P.O. BOX 201601
HELENA, MONTANA 59620-1601

November 17, 1994

Bob Robinson, Director
Department of Health and Environmental Sciences
P.O. Box 200901
Helena, MT 59620-0901

RE: DSL/DHES Water Quality Liaison Position

Dear Bob:

As we have discussed on several occasions earlier this year, we need to get together to more clearly define the role of the DSL/DHES water quality liaison position.

First and foremost, we need to evaluate the basic question of whether a liaison position is the most effective and efficient use of our limited resources to fulfill our information transfer needs. Depending on the results of that analysis, there are a number of more detailed issues to be discussed. Assuming we continue to proceed with a liaison position, the following questions need to be clearly defined:

1. What is the function of the position?
2. What are the day-to-day duties and responsibilities of the position, as it relates to the implementation of the Water Quality Act, the Metal Mine Reclamation Act, the Montana Environmental Policy Act and the existing interagency MOU.
3. How will work assignments be made and how will priorities be established?
4. What authority or other resources will be available to the liaison (from both the DSL and the DHES) to assure the duties and responsibilities of the position are fulfilled?
5. What work products will be produced, in what time-frames, at what quality level?
6. How will day-to-day communications between the agencies be managed and documented?
7. What guidelines need to be developed to assure that the liaison has a clear understanding of his/her duties and responsibilities regarding interagency relationships, attitudes, and the items above?
8. How will the performance of the position be evaluated?

"AN EQUAL OPPORTUNITY EMPLOYER"

Bob Robinson
November 17, 1994
Page Two

9. When will the performance of the position be evaluated, by whom?
10. How will disciplinary actions be handled?
11. What recourse will be used to resolve day-to-day issues, statutory issues, etc.
12. Where will the position physically reside (i.e. half-time at DHES and half-time at DSL)?
13. Is 1.0 FTE adequate to handle the work that needs to be accomplished?

In addition, the Water Quality Act and the administrative rules have been modified since the position was created. I believe we need to look at how these modifications may affect the functioning of the liaison position.

If you have additional issues that you would like to address, we can add them to the list.

With a clearer definition of the duties and responsibilities of the position and our agencies' responsibilities, I believe we can coordinate more effectively than in the past.

I will call you later this week to determine a time when we can meet and who we should have attend the meeting from our agencies to thoroughly discuss these issues.

Sincerely,

Arthur R. Clinch
Arthur R. Clinch, Commissioner
Department of State Lands

jc

cc: Steve Pilcher
Gary Amestoy
Sandi Olsen

APPENDIX C

Model EA Checklist Format

Introduction

The environmental assessment (EA) checklist is a tool designed to assist state agencies in reviewing proposed actions under the Montana Environmental Policy Act (MEPA) and the agency MEPA Rules. The checklist is specifically designed to help the reviewer and the decision-maker analyze the impacts of the proposed action, evaluate reasonable alternatives to the proposed action, and determine whether the proposed action would have significant impacts on the quality of the human environment, and thus require preparation of an environmental impact statement (EIS).

The EA checklist presents the range of environmental resources and values that are potentially subject to impacts. For each resource, the reviewer is asked to determine the level of impact that can be anticipated if the proposed action is undertaken. In completing the checklist, the reviewer will also become aware of subjects where additional information is needed.

The EA checklist provides a systematic method for the evaluation of environmental impacts under MEPA. The checklist also helps document an agency's decision on whether an EIS is necessary.

As a cautionary note, an EA checklist will not be the appropriate level of review for all agency actions. Some agency actions may require a more detailed narrative analysis. It is strictly

an agency decision as to what form of analysis is appropriate under the circumstances.

Agencies are in no way required to follow this generic EA Checklist format. In fact, agencies are encouraged to modify the checklists for each type of agency action to ensure that questions addressing all potentially affected environmental resources and values are included.

Instructions

PART I Proposed Action Description

Part I of the EA Checklist is a summary of basic information about the proposed action. The checklist is designed to accommodate environmental evaluation of all types of proposed actions, including those initiated by an agency and those that involve the approval of permits or licenses or distribution of funds to an applicant. The reviewer should fill in all of the information in order to provide the agency decision-maker and other interested persons with a descriptive overview of the proposed action and the location that would be affected. This information will be available in the agency's files or the application submitted by a project sponsor.

PART II Environmental Review

Under this part, the reviewer is asked to complete three sections: (1) checklists of potential environmental

MEPA Handbook

impacts; (2) an evaluation of reasonable alternatives; and (3) a list of mitigation and stipulation measures.

1. Physical and Human Environment Checklist

The physical and human environment checklists address a broad array of environmental resources and values, although the lists are not exhaustive and may not include all possible types of impacts that could result from specific agency actions. Each question within a given checklist is generic and may potentially encompass a number of specific impacts depending on the complexity of the proposed action. At the conclusion of each checklist the reviewer must narratively analyze the cumulative and secondary impacts, if any, the proposed action may have on the specific resource or value.

(a) The reviewer should indicate by a check mark the anticipated level of impact on each feature of the environment addressed by the checklist questions. In making this evaluation, the reviewer should keep in mind the significance criteria noted in the agency's MEPA rules (MEPA Model Rule IV).

(b) If the nature of an impact is "unknown" the reviewer should explain in Part III entitled "Narrative Evaluation," why the unknown impact has not or can not be evaluated. The reviewer should also consider the risks to human health and safety and to the environment in deciding whether the unknown impact may be significant.

(c) "Maybe" answers should always be considered "yes" answers for purposes of checking off specific impacts. For example, if a reviewer has any doubt about whether an impact may be potentially significant, the impact should be considered potentially significant rather than minor pending further investigation.

(d) If there is an impact on the physical or human environment whether it be minor or potentially significant, the reviewer should (in Part III) describe the scope and level of the impact and the specific resources it affects.

(e) The reviewer should assume that a project will comply with agency rules and any standard stipulations or permit requirements that are routinely applied to a particular type of project and that would mitigate impacts.

(f) The reviewer should place a check in the column entitled "Can Impacts Be Mitigated" if stipulations are enforceable by the agency or another governmental agency. The reviewer should discuss the stipulations or mitigation measures in detail in Part II (3).

(g) In some cases a potentially significant impact can be reduced below the level of significance by mitigation. Under this scenario, if the agency can show that all of the impacts of the proposed action have been identified, that the impacts will be mitigated below the level of significance, and that no significant impact is likely to occur, then this document, for purposes of the agency

ATTACHMENT G
DEPARTMENT OF STATE LANDS



MARC RACICOT, GOVERNOR

1625 ELEVENTH AVENUE

STATE OF MONTANA

(406) 444-2074

P.O. BOX 201601
HELENA, MONTANA 59620-1601

November 23, 1994

MEMORANDUM

TO: HRB Management and Staff

FROM: Sandra J. Olsen, Chief
Hard Rock Bureau *SJO*

RE: Development of Stipulations

Stipulations are for the dual purpose of resolving outstanding compliance questions with MMRA identified during adequacy review and for resolving significant issues as identified in a preferred alternative pursuant to MEPA.

Non-administrative stipulations are developed from the EA or EIS. Because MEPA needs and permitting needs, and thus language, vary, the following detail must be considered when drafting stipulations for attachment to permits:

- . a clear statement of the activity or action expected
- . a clear definition as to when the activity must be complied with
- . a statement indicating whether further action on the part of the Department is necessary
- . a clear statement of any supplemental or continuing reporting requirements and the schedule of compliance for such reporting requirements.

In addition, each stipulation should be reasonable and practicable as well as be grounded in statutory authority. Administrative stipulations should contain the same level of detail, however, they are for the purpose of streamlining Department work effort.

These criteria will be used at each level of management review to determine the adequacy of proposed stipulations.

cc: Legal Staff
G. Amestoy
B. Clinch

DEPARTMENT OF STATE LANDS
HARD ROCK BUREAU
PO BOX 201601
HELENA, MT 59620-1601
(406) 444-2074

ATTACHMENT O

Operating Permit Number: _____
Report Due date: _____
(Enclose Required \$25.00 Annual Fee)

ANNUAL REPORT FOR OPERATING PERMITS

Title 82, Chapter 4, Part 3, MCA
And Rules And Regulations Pursuant Thereto

Name and Address of Permittee:
Phone Number: ()

Location, and Legal Description of Permitted Area		
Miles:	Direction From:	Nearest Town:
Section:	T____N ____S	R____E ____W
County:		

Status of Operation:

1. Operation is currently: Active () Inactive () Abandoned (). If inactive, state reason: _____
2. Acreage bonded _____ Amount of bond \$ _____
3. Estimated acreage to be newly disturbed by operation in the next twelve (12) months: _____
4. Requested bond release on _____ acres reclaimed. Extent of reclamation accomplished under Reclamation Plan? _____
5. Enclose updated maps of permit area, showing area disturbed, areas reclaimed (with beginning dates, amounts, nature and current status of reclamation work done in last (12) months) and areas to be disturbed in the next twelve (12) month period.
6. Current year average quarterly employees: January to March () April to June () July to September () October to December ().
7. Previous year quarterly employees: January to March () April to June () July to September () October to December ().
8. Attach names and addresses of Principal officers, partners, agents, etc. As required by 82-4-335(4)(a).

I CERTIFY THAT THE ABOVE STATEMENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE.

Signature: _____, Title: _____

FOR DEPARTMENT OF STATE LANDS USE ONLY

Date Received: _____ Renewal Fee Received: _____ Map Updated? Yes () No ()
Information Required by 82-4-335(4)(a) Attached? Yes () No ()
Will Permittee Expand Scope of Operation During Next Permit Year? Yes () No ()

INTRODUCED BY _____

BILL NO. _____

BY REQUEST OF THE DEPARTMENT OF STATE LANDS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE METAL MINE RECLAMATION ACT; STRENGTHENING ENFORCEMENT PROCEDURES; AUTHORIZING ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES; INCREASING THE PERMIT REVIEW PERIOD FOR CERTAIN OPERATIONS; AMENDING 82-4-305, MCA, 82-4-321, MCA, 82-4-337, MCA, 82-4-341, MCA, 82-4-361, MCA, AND 82-4-362, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-4-305, MCA, is amended to read:

82-4-305. Exemption — small miners — written agreement. (1)

Except as provided in subsections (b) through (4), the provisions of this part do not apply to any small miner if the small miner annually agrees in writing:

- (a) that the small miner will not pollute or contaminate any stream;
- (b) that the small miner will provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals;
- (c) that the small miner will provide a map locating the miner's mining operations. The map must be of a size and scale determined by the department.

(d) if the small miner's operations are placer or dredge mining, that the small miner shall reclaim all land disturbed by the operations to comparable utility and stability as that of adjacent areas.

(2) For small-miner exemptions obtained after September 30, 1985, a small miner may not obtain or continue an exemption under subsection (1) unless the small miner annually certifies in writing:

- (a) if the small miner is a natural person that:
- (i) no business association or partnership of which the small miner is a member or partner has a small-miner exemption; and
- (ii) no corporation of which the small miner is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or
- (b) if the small miner is a partnership or business association, that:
- (i) none of the associates or partners holds a small-miner exemption; and
- (ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or

(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

- (i) holds a small-miner exemption;
- (ii) is a member or partner in a business association or partnership that holds a small-miner exemption;
- (iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

(3) A small miner whose operations are placer or dredge mining shall post a performance bond equal to the state's actual cost of reclaiming the disturbed land, although the bond may not exceed \$5,000 per operation. However, if the small miner has posted a bond for reclamation with another government agency, the small miner is exempt from the requirement of this subsection.

(4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

(6) To collect additional reclamation costs, the department shall notify the small miner by certified mail at the address determined under subsection (5), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs it considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(7) A small miner who intends to use a cyanide ore-processing reagent shall obtain an operating permit for that part of the small miner's operation where the cyanide ore-processing reagent will be used or disposed of.

(8) The exemption provided in this section does not apply to:

(a) a person whose failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described under 82-4-360;

(b) a person who has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) a person who has failed to post a reclamation bond required by this section, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation; or

(d) a person who has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(9) The exemption provided in this section does not apply to an area under permit pursuant to 82-4-363 or to an area that has been permitted pursuant to 82-4-365 and reclaimed by the permittee, the department, or any other state or federal agency.

(10) The department may inspect at any reasonable time, without advance notice or permission, a mining operation or premises upon which mining is being conducted or for which the department has reason to believe mining may have been conducted since 1970.

Section 2. Section 82-4-321, MCA, is amended to read:

82-4-321. Administration. The board is charged with the responsibility of administering this part. In order to implement its terms and provisions, the board shall from time to time promulgate such rules as the board shall deem necessary. The board may exercise such powers, duties, and functions to the department as it deems necessary for the performance of its duties as administrator of this part. The board shall employ experienced, qualified persons in the field of mine-land reclamation who, for the purpose of this part, are referred to as supervisors. A supervisor may inspect at any reasonable time, without advance notice or permission, any exploration or mining operation or premises upon which mining or exploration is being conducted or for which the department has reason to believe mining may have been conducted since 1970.

Section 3. Section 82-4-337, MCA, is amended to read:

82-4-337. Inspection — issuance of operating permit — modification, amendment, or revision. (1) (a) The board shall cause all applications for operating permits to be reviewed for completeness within 60 days of receipt of the initial application and within 30 days of receipt of responses to notices of deficiencies. The initial completeness notice must note all deficiency issues, and the department may not in a later completeness notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department may, however, raise any deficiency during the adequacy review pursuant to subsection (1)(b). The board shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within the appropriate review period.

(b) Unless the review period is extended as provided in this section, the board shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the board does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within the time period, the operating permit must be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(c). The department shall promptly notify the applicant of the form and amount of bond which will be required.

(c) A permit may not be issued until:
(i) sufficient bond has been submitted pursuant to 82-4-338;
(ii) the information and certification have been submitted pursuant to 82-4-335(9); and

(iii) the department has found that permit issuance is not prohibited by 82-4-335(8) or 82-4-341(6).

(d) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible due to extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 150 days to allow inspection

of the site and reasonable review. The department shall serve written notice of extension upon the applicant in person or by certified mail, and any extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) If the department determines that additional time is needed for analysis to determine whether a detailed statement is necessary under 15-1-201, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 75 days to permit reasonable analysis. The applicant may by written waiver extend this period.

(iii) If the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 45 days in order to permit reasonable review. The applicant may by written waiver extend this period.

(iv) If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

(v) Failure of the board to act upon a complete application within the extension period constitutes approval of the application, and the permit must be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit must be granted for the period required to complete the operation and is valid until the operation authorized by the permit is completed or abandoned unless the permit is suspended or revoked by the board as provided in this part.

(3) The operating permit must provide that the reclamation plan may be modified by the board, upon proper application of the permittee or department, after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so they will not conflict with existing laws;
(b) when the previously submitted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection.

(4) During the term of an operating permit, an operator may apply for an amendment or revision to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

(5) Applications for major amendments must be processed in the same manner as applications for new permits.

(6) Major amendments are those that may significantly affect the environment. Minor amendments are those that will not significantly affect the environment. The department may by rule establish criteria for classification of amendments as major or minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for processing of minor amendments.

(7) If the department demonstrates that a revision may result in a significant environmental impact that was not previously and substantially evaluated in an environmental impact statement, the application must be processed in the same manner as is provided for new permits. Applications for minor amendments and other revisions must be processed within 30 days of receipt of an application.

Section 4. Section 82-4-341, MCA, is amended to read:

82-4-341. Compliance with reclamation plan — reclamation by board. (1) Following receipt of the permittee's action and after the time the board has determined that the board shall cause the permit area to be inspected at least annually to determine if the permittee has complied with the reclamation plan and the board's rules.

(2) The permittee shall proceed with reclamation as scheduled in his approved reclamation plan. Following written notice by the board noting deficiencies, the permittee shall commence action within 30 days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected, provided that deficiencies that also violate other laws that require earlier rectification shall be corrected in accordance with the applicable time provisions of such laws. The court may extend performance periods referred to in this section and in 82-4-305 for delays clearly beyond the permittee's control, but only when the permittee is, in the opinion of the board, making every reasonable effort to comply.

(3) Within 30 days after notification by the permittee and when, in the judgment of the board, reclamation of a unit of disturbed land area is properly completed, the permittee shall be notified in writing and his bond on said area shall be released or decreased proportionately to the increase included within the bond coverage.

(4) If reclamation of disturbed land is not pursued in accordance with the reclamation plan and the permittee has not commenced action to rectify deficiencies within 30 days after notification by the board or if reclamation is not properly completed in conformance with the reclamation plan within 2 years after completion or abandonment of operation on any fraction of the permit area or such longer period as may have been authorized hereunder or if, after default by the permittee, the surety either refuses or fails to perform the work to the satisfaction of the board within the time required therefor, the board may, with the self-assessment and material under its control, in concert with others, take such actions as are necessary or required for reclamation of the disturbed lands. Such work shall be let on the basis of competitive bidding. The board shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under this section, including a reasonable charge for the services performed by the state personnel and the state equipment and material used, and the same shall be bonded to be reimbursed.

(5) The board shall notify the permittee and his surety by order. The order shall state the amount of necessary expenses incurred by the board in reclaiming the disturbed land and a notice that the amount is due and payable to the board by the permittee and the surety. If the amount specified in the order is not paid within 30 days after receipt of the notice, the attorney general, upon request of the board, shall bring an action on behalf of the state in district court. The surety shall be liable to the state to the extent of the bond. The permittee shall be liable for the remainder of the cost. Upon completion of reclamation, the board shall return any amount not expended.

(6) In addition to the other liabilities imposed by this part, failure to commence action to remedy specific deficiencies in reclamation within 30 days after notification by the board or failure to satisfactorily complete reclamation work on any segment of the permit area within 2 years, or such longer period as the board may permit on permittee's application therefor or on the board's own motion, after completion or abandonment of operations on any segment of the permit area shall constitute sufficient grounds for cancellation of a permit or license and refusal to issue another permit or license to the applicant; provided, however, that such action shall not be effective while an appeal is pending from any ruling requiring the same.

Section 5. Section 82-4-361, MCA, is amended to read:

82-4-361. Violation — penalties — waiver. (1) A person who violates any of the provisions of this part is liable for the full amount of the penalty, except that the provisions of any statute or permit or the conditions of a small miner's permit shall have priority in the event of a conflict. If the person is a small miner, the penalty shall be not less than \$100 or more than \$1,000 for the violation and an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues and may be enjoined from continuing such violation.

(2) A person or operator who violates any of the provisions of this part, rules or orders adopted under this part, or term or condition of a permit and any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation shall pay a civil penalty of not less than \$100 or more than \$1,000 for the violation and an additional civil penalty of not less than \$100 or more than \$1,000 for each day during which a violation continues and may be enjoined from continuing such violation. If the violation created an imminent danger to the health or safety of the public or caused significant environmental harm, the maximum penalty is \$5,000 for the violation and \$5,000 for each day of violation.

(3) The attorney general shall, upon the request of the department, for the recovery of the penalties provided for in this section and the action for enforcement of any term or condition of a permit or any director, officer, or agent of a corporation who willfully authorizes, orders, or carries out a violation, may bring an action in district court to enforce the penalties and to prevent or restrain the operation of the mine or other activity threatening to violate or carry out a violation.

(4) The civil penalties provided for in this section may be waived for a minor violation if it is determined that the violation does not represent potential harm to public health, public safety, or the environment and does not impair the administration of this part. The board shall adopt rules to implement and administer a procedure for waiver of a penalty under this subsection.

(5) The department shall notify the person or operator of the violation,

penalty no more than 30 days after notice of violation.

The person or operator shall, by filing a written request within 20 days of receipt of the notice, be entitled to a hearing on the issues of whether the alleged violation has occurred and whether the penalty proposed to be assessed is proper.

After the hearing or after the time for requesting a hearing has expired, the board shall make findings of fact and shall issue a written decision as to the occurrence of the violation and the amount of penalty warranted and shall order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, he shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. Any person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits his right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in any action brought in the name of the state of Montana by the department in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or the district having jurisdiction over the defendant.

Section 6. Section 82-4-362, MCA, is amended to read:

82-4-362. Suspension of permit — hearing. (1) If any of the requirements of this part, the rules adopted under this part, or a license, permit, or reclamation plan has not been complied with, the department shall serve a notice of noncompliance on the licensee or permittee or, if necessary, the commissioner shall order the suspension of the permit. The permit shall be suspended for failure to comply with an order to pay a civil penalty if the order is not subject to administrative or judicial review. The commissioner may order immediate suspension of a permit whenever the commissioner makes a finding that a violation of this part, the rules adopted under this part, or a license or permit, including the reclamation plan, is creating an imminent danger to the health or safety of persons outside the permit area. The notice or order must be handed to the licensee or permittee in person or served by certified mail addressed to the permanent address known on the application for a license or permit. The notice of noncompliance or order of suspension must specify in what respects the operator has failed to comply with this part, the rules adopted under this part, the permit, or the reclamation plan, and must, if the violation has not been abated, occur abatement within a specified time period.

(2) The department may suspend the permit of any operator that it finds, after opportunity for hearing, has demonstrated a pattern of violations of this part, the rules adopted under this part, a license, permit, or a reclamation plan of a nature and frequency to indicate an intent not to comply with this part.

(3) If the licensee or permittee has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set in the notice or order, the permit may be revoked by order of the board and the performance bond forfeited to the department. The licensee or permittee is entitled to a hearing before the department on the revocation of a permit or license or the forfeiture of a performance bond if a hearing is requested within 30 days after service of notice as provided in subsection (1). The notice must state when those measures may be undertaken and must give notice of opportunity for a hearing. If a hearing is requested within the 30-day period, the permit or license may not be revoked and the bond may not be forfeited until a final decision is made by the department.

~~not (1)~~ (1) If a permittee fails to pay the fee or file the report required under 82-4-339, the department shall serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not comply within 30 days of receipt of the notice, the commissioner shall suspend the permit. The commissioner shall reinstate the permit upon compliance.

